IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2392 OF 2005

Bhagwan Tukaram Adole and ors. ... Applicants

versus

The State of Maharashtra ... Respondent

...

Mr.R.V. More, for the Applicants.

Mr.A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

15th April 2005

P.C.:

. Heard Counsel for the parties. Perused the record. I see no reason to depart from the conclusion reached by the Court below in rejecting the bail application preferred by the present Applicants. Mr. More vehemently contends that the Applicants herein have been falsely implicated out of group rivalry. The prosecution evidence, even if taken as it is,

indicates that the Applicants assaulted the victim by fists and blows. It is submitted that if only three sticks have been recovered by the investigating agency, it is incomprehensible that the number of injuries caused to the deceased can be said to have been caused by as many as 28 accused assaulting together. It is also contended that the incident in question took place at around 7 p.m. whereas the F.I.R. has been lodged after 10 p.m. and the delay remains unexplained. Whereas, in the interregnum, the Applicants accused party lodged F.I.R. against the complainant party for assault on complainant. Further, Mr. More submits that, in any case, Applicants Nos. 8 and 10, Accused Nos. 22 and 25, respectively ought to be released as they are of tender age and students.

. However, to my mind, in view of the overwhelming evidence to indicate the complicity of each of the Applicant, it is not a case for bail, especially having regard to the seriousness of the offence and the manner in which the deceased was brutally assaulted. Chart has been produced before me by both sides indicating the

names of witnesses, who have named each of the Applicant. Applicants Nos.1, 2, 6, 7 and 12 have been named by four witnesses; Applicants Nos. 3, 4, 5, 8 and 10 have been named by three witnesses and Applicants Nos. 9 and 11 have been named by two witnesses respectively. The witnesses have deposed that each of these Applicants took part in the assault and assaulted the victim by fists and blows. The fact that they assaulted by fists and blows does not absolve them of the alleged offence, as they have been charged for being member of the unlawful assembly. Counsel for the Applicants contends only three sticks have been recovered during the investigation. That, to my mind, will make no difference. The number of injuries can be established from the medical evidence and the ocular evidence to be adduced at the trial. In any case, two stones, which were used to assault the deceased causing fatal injury to him, have been recovered. Even the argument that there is delay in lodging the F.I.R. does not commend to me. The delay is not of such a nature that the genuineness of the prosecution case can be doubted. Similarly, the accused party registered

offence before the present F.I.R. was lodged against the complainant party also is of no avail to the Applicants, having regard to the evidence on record that each of the Applicants were seen assaulting the complainant party with sticks and stones, prayer for bail on behalf of all the Applicants ought to be rejected.

. Even though on merits, I have answered the issue against the Applicants Nos. 8 and 10, as they are of tender age of only 18 years and as investigation is complete and charge sheet is filed, and there are no antecedents against them, indulgence can be shown to Applicants Nos. 8 and 10 (Accused Nos. 22 and 25 respectively) by releasing them on bail, but on imposing strict conditions. Accordingly, this application is disposed of by passing following order.

(A) Prayer for bail of Applicants Nos. 1 to 7, 9, 11 and 12 is rejected.

(B) Applicants Nos. 8 and 10 - Accused Nos. 22 and 25 - Vinod Nivrutti Bhagade and Krishna Babruwan Bhagade - are

released on bail in connection with CR.No.98/2004 registered with Igatpuri Police Station, District Nasik, on executing personal bond in the sum of Rs.15,000/- (Rupees Fifteen thousand only) each with two local sureties in the like amount.

(C) Applicants Nos. 8 and 10 shall not influence prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(D) Applicants Nos. 8 and 10 shall not enter Igatpuri Taluka during the pendency of trial except to attend the Court case on the specified dates.

(E) Applicants Nos. 8 and 10 shall inform their place of residence to the investigating officer as well as the trial Court within one week from the date of release. In addition, they shall report to the nearest police station once in a month on First Saturday of every

English calendar month between 10 a.m. to 2 p.m. till the disposal of the trial.

(E) Applicants Nos. 8 and 10 shall co-operate for early disposal of the trial. If the trial Court is of the opinion that they are responsible for delay in disposal of the trial, that fact be recorded in the roznama, which can be a ground for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)